

FEDERAL RESERVE SYSTEM

Bank of Montreal
Montreal, Canada

BMO Financial Corp.
Wilmington, Delaware

Order Approving the Acquisition of a Bank Holding Company and the Merger of Bank Holding Companies

Bank of Montreal, Montreal, Canada, a foreign banking organization and a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”),¹ and its subsidiary, BMO Financial Corp. Wilmington, Delaware (“BFC,” and together with Bank of Montreal, “BMO”), have requested the Board’s approval under section 3 of the BHC Act² to acquire BancWest Holding Inc. (“BancWest”) and thereby indirectly acquire Bank of the West (“BOTW”), both of San Francisco, California. Following the proposed transaction, BOTW would be merged with and into BMO’s subsidiary bank, BMO Harris Bank National Association (“BMO Harris Bank”), Chicago, Illinois.³

Bank of Montreal, with consolidated assets of approximately \$833.8 billion,⁴ is the fourth largest bank in Canada. Bank of Montreal provides retail and commercial banking, wealth management, insurance, and investment banking

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ The merger of BOTW into BMO Harris Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the Bank Merger Act application on January 17, 2023.

⁴ Bank of Montreal consolidated assets are as of September 30, 2022.

products and services, and has operations primarily in Canada and the United States, as well as the United Kingdom, Europe, the Caribbean, and Asia. In the United States, Bank of Montreal operates branches in New York and Illinois and an agency in Texas. Through BFC, Bank of Montreal controls BMO Harris Bank and BMO Harris Central National Association, Roselle, Illinois. BFC, with consolidated assets of \$195.1 billion, is the 23rd largest insured depository organization in the United States.⁵ BFC controls approximately \$132.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ BFC's subsidiary banks operate in Arizona, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, Washington, and Wisconsin.⁷

BancWest is a wholly owned subsidiary of BNP Paribas USA, Inc. ("BNPP USA"), New York, New York, and an indirect, wholly owned subsidiary of BNP Paribas, Paris, France. BNPP USA, with consolidated assets of approximately \$143.81 billion, is the 34th largest insured depository organization in the United States. BNPP USA controls approximately \$75.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BNPP USA, through BancWest, controls BOTW, which has operations in Arizona, California, Colorado, Iowa, Idaho, Kansas, Minnesota, Missouri, North Dakota, Nebraska, New Mexico, Nevada, New York, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

⁵ Consolidated asset and national ranking data are as of September 30, 2022. National ranking data have not been adjusted for the recently approved acquisition of MUFG Union Bank, National Association, San Francisco, California, by U.S. Bancorp, Minneapolis, Minnesota. See U.S. Bancorp, FRB Order No. 2022-22 (October 14, 2022).

⁶ Consolidated national deposit and market share data are as of September 30, 2022. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁷ BFC also controls BMO Delaware Trust Company, Greenville, Delaware, a state-chartered nondepository trust company.

On consummation of the proposal, BFC would become the 15th largest insured depository organization in the United States, with consolidated assets of approximately \$286.8 billion, which would represent 1.0 percent of the total assets of insured depository organizations in the United States. BFC would control total consolidated deposits of approximately \$208.2 billion, which would represent 1.1 percent of the total amount of deposits of insured depository institutions in the United States.⁸

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (87 Federal Register 4022 (January 26, 2022)).⁹ The Board extended the initial period for public comment to accommodate public interest in this proposal, providing interested persons until July 19, 2022, a total of more than 170 days, to submit written comments (87 Federal Register 31561 (May 24, 2022)). The time for submitting comments has expired, and the Board has considered the proposal and all substantive comments received in light of the factors set forth in section 3 of the BHC Act.

In addition, the Board held a virtual public meeting to provide interested persons an opportunity to present oral testimony on the factors that the Board is required to consider under the BHC Act.¹⁰ At the public meeting, 76 individuals provided oral testimony, and many of those individuals also submitted written comments. In total, the Board received approximately 200 comments from individuals and organizations on the proposal through oral testimony, written comments, or both. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals.

⁸ See Appendix I for deposit ranking and deposit data by state, for states in which BMO and BancWest both have banking operations. State deposit ranking and deposit data are as of June 30, 2022, unless otherwise noted.

⁹ 12 CFR 262.3(b).

¹⁰ The virtual public meeting was held jointly with the OCC on July 14, 2022.

A significant number of commenters supported the proposal.¹¹ Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of BMO Harris Bank and BOTW as a result of increased resources and services provided by the combined organization. Commenters commended both BMO Harris Bank and BOTW for their commitment to community organizations, including through service on the boards of many organizations, volunteering by officers and employees, and charitable contributions, and for their commitment to local communities, including through investment in community development and affordable housing. Commenters, including the banks' customers, also noted that officers and employees of both banks frequently provide high-quality customer service and support for individuals and small businesses.

A significant number of commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions, or otherwise expressed concerns about the proposal.¹² Many commenters raised fair-lending-related concerns, asserting that BMO Harris Bank and BOTW lagged in mortgage lending to minority communities and individuals, as compared to peer institutions. Some commenters criticized the records of performance of both institutions in meeting the credit needs of small businesses. Many commenters expressed concern that the proposal would not result in public benefits. In addition, some commenters expressed concern that the proposal would be anticompetitive and would pose a risk to financial stability.

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meeting and in written submissions. The Board also considered the

¹¹ The Board received approximately 158 comments in support of the proposal (orally or in writing, or both). Approximately 56 commenters provided oral comments in support of the proposal at the public meeting.

¹² The Board received approximately 42 comments that opposed or raised other concerns regarding the proposal (orally or in writing, or both). Approximately 20 commenters provided oral comments in opposition to the proposal or raised other concerns regarding the proposal at the public meeting.

information presented in the initial application and subsequent submissions by BMO, various reports filed by the relevant companies, and publicly available information. In addition, the Board consulted with the OCC, the Federal Deposit Insurance Corporation (“FDIC”), the Department of Justice (“DOJ”), the Office of the Superintendent of Financial Institutions of Canada (“OSFI”), and the Consumer Financial Protection Bureau (“CFPB”), and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board concludes that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.¹³ These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 (“CRA”)¹⁴ of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as

¹³ See 12 U.S.C. § 1842.

¹⁴ 12 U.S.C. § 2901 et seq.

compliance with the other provisions of section 3(d) of the BHC Act.¹⁵ For proposals involving a foreign bank, the Board is prohibited from approving a proposal under section 3(c) of the BHC Act if it finds that the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.¹⁶

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.¹⁷ The Board may not approve under this provision an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹⁸ When determining whether to approve an application under this provision, the Board must take into account the record of the

¹⁵ 12 U.S.C. § 1842(d).

¹⁶ 12 U.S.C. § 1842(c)(3)(B). Under section 3(c) of the BHC Act, the Board also is prohibited from approving a proposal if the applicant fails to provide the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal laws. 12 U.S.C. § 1842(c)(3)(A). Bank of Montreal has committed to make such information available to the Board to the extent not prohibited by applicable law. Bank of Montreal also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board. The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Bank of Montreal operates and has communicated with relevant government authorities concerning access to information. Based on all the facts of record, the Board determines that considerations related to access to information by the Board are consistent with approval.

¹⁷ 12 U.S.C. § 1842(d)(1)(A).

¹⁸ 12 U.S.C. § 1842(d)(1)(B).

applicant's depository institution under the CRA and the applicant's record of compliance with applicable state community reinvestment laws.¹⁹ In addition, the Board may not approve an interstate application under this provision if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.²⁰

For purposes of this provision, the home state of Bank of Montreal and BFC is Illinois.²¹ BOTW is located in Arizona, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. BMO is well capitalized and well managed under applicable law. BOTW has been in existence for more than five years, and BMO Harris Bank has an "Outstanding" rating under the CRA.²²

On consummation of the proposed transaction, BMO would control 1.1 percent of the total amount of consolidated deposits of insured depository institutions

¹⁹ 12 U.S.C. § 1842(d)(3).

²⁰ 12 U.S.C. § 1842(d)(2)(A) and (B). Under section 3(d) of the BHC Act, the acquiring and target organizations have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch.

²¹ 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

²² One of the jurisdictions in which BMO operates—Illinois—has a state community reinvestment law. See 205 Ill. Comp. Stat. Ann. § 735/35-1 to 35-45. However, this state community reinvestment law does not apply to BMO.

in the United States. Of the states in which BMO Harris Bank and BOTW have overlapping banking operations, Arizona imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control, Kansas imposes a 15 percent limit, Missouri imposes a 13 percent limit, Washington imposes a 30 percent limit, Wisconsin imposes a 30 percent limit, and Minnesota does not impose a limit.²³ The combined organization would control approximately 3.0 percent of the total amount of deposits of insured depository institutions in Arizona, 1.8 percent in Kansas, 3.2 percent in Minnesota, 1.0 percent in Missouri, less than 1 percent in Washington, and 11.9 percent in Wisconsin. Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.²⁴ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.²⁵

BMO and BancWest have subsidiary banks that compete directly in seven banking markets located throughout Arizona, Kansas, Minnesota, Missouri, Washington, and Wisconsin. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the markets (“market deposits”) that BMO

²³ Ariz. Rev. Stat. § 6-328(A); Kan. Stat. Ann. § 9-520(a); Mo. Rev. Stat. § 362.915; Wash. Rev. Code Ann. § 30A.49.125(6); Wis. Stat. § 221.0901(7).

²⁴ 12 U.S.C. § 1842(c)(1)(A).

²⁵ 12 U.S.C. § 1842(c)(1)(B).

would control;²⁶ the concentration level of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²⁷ the number of competitors that would remain in the markets; and other characteristics of the markets. The Board also has considered the public comments on the competitive effects of the proposal.²⁸

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in each of the seven banking markets in which BMO’s and BancWest’s subsidiary banks compete. On

²⁶ Local deposit and market share data are as of June 30, 2022, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

²⁷ In applying the DOJ Bank Merger Guidelines issued in 1995 (see <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992, and amended in 1997, for the characterization of a market’s concentration. See <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²⁸ Some commenters expressed concerns that the proposal is “anti-competitive” without providing additional detail.

consummation of the proposal, one banking market would remain unconcentrated, four markets would remain moderately concentrated, and two markets would remain highly concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines, and the change in the HHI in each market would be small. Numerous competitors would remain in the markets.²⁹

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that it did not conclude that the proposal would have a significantly adverse effect on competition. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition, or on the concentration of resources, in the banking markets in which BMO's and BancWest's subsidiary banks compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, Future Prospects, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.³⁰ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy,

²⁹ These banking markets and the competitive effects of the proposal in these markets are described in Appendix II.

³⁰ 12 U.S.C. § 1842(c)(2), (5), and (6).

asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions effectively. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also has consulted with OSFI, the agency with primary responsibility for the supervision and regulation of federally registered Canadian banking organizations, including Bank of Montreal.

The capital levels of Bank of Montreal exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.³¹ BMO, BancWest, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. The proposal is structured as a cash stock purchase, followed by a merger of holding companies and then a merger of banks.³² The capital, asset quality, earnings, and liquidity of BMO are consistent with approval, and BMO appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

³¹ The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 capital to total assets of Bank of Montreal and BFC.

³² Specifically, BMO would purchase all the shares of BancWest for cash consideration, and BancWest would immediately thereafter merge with and into BFC, with BFC as the surviving entity. BOTW would immediately thereafter merge with and into BMO Harris Bank, with BMO Harris Bank as the surviving entity. BMO has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Bank of Montreal's U.S. operations, BNPP USA, BancWest, and BOTW, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BMO; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comments on the proposal.

BMO, its subsidiary depository institutions, and BOTW are considered to be well managed. BMO's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and BMO's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered BMO's plans for implementing the proposal. BMO has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.³³ In addition, BMO's management has the experience and resources to operate the resulting organization in a safe and sound manner.³⁴

³³ BFC currently is a "Category IV U.S. intermediate holding company" for purposes of the Board's enhanced prudential standards rule, 12 CFR part 252. Prior to becoming a Category III U.S. intermediate holding company, BMO has committed to submit quarterly implementation plans for complying with the Category III requirements.

³⁴ One commenter requested the Board and OCC consider allegations that BMO Harris Bank failed to preserve evidence in connection with a bankruptcy litigation case involving a bank that BMO acquired and merged with BMO Harris Bank in 2011. In evaluating the proposal, the Board has taken into account the litigation in *Kelley v. BMO Harris Bank, N.A.*, No. 19-cv-01756-WMW (D. Minn.) (originally filed as *Kelley v. BMO Harris Bank N.A., as successor to M&I Marshall and Ilsley Bank*, Adversary Proceeding No. 12-04288, as part of the Petters bankruptcy litigation, *In Re. Petters*, No. 4:08-bk-045257 (Bankr. D. Minn)).

Based on all the facts of record, including BMO's supervisory record, managerial and operational resources, plans for operating the combined organization after consummation, and public comments received on the proposal,³⁵ the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BMO, BNPP USA, and their subsidiary depository institutions in combatting money-laundering activities, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

As required by section 3 of the BHC Act, the Board considers whether Bank of Montreal is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.³⁶ The Board previously has

³⁵ Some commenters expressed concerns regarding the amount of funding that BNP Paribas and Bank of Montreal have provided to fossil-fuel companies, while one commenter requested that the combined organization publish annual disclosures related to environmental issues. In addition, one commenter expressed concern that BOTW had not disclosed information regarding the diversity of its employees. These comments concern matters that are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

³⁶ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth for foreign banks and parent foreign banks in the Board's Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regulation examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the

determined that Bank of Montreal is subject to comprehensive supervision on a consolidated basis by its home country supervisor, OSFI.³⁷ Bank of Montreal remains supervised by OSFI on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board concludes that Bank of Montreal continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.³⁸

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.³⁹ In evaluating whether the proposal satisfies the convenience and needs statutory factor, the Board considers the impact that the proposal will or is likely to have on the communities served by the combined organization. The Board reviews a variety of information to determine whether the relevant institutions' records demonstrate a history of helping to meet the needs of their customers and communities. The Board also reviews the combined institution's post-consummation plans and the expected impact of those plans on the communities served by the combined institution, including on low- and

bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide, consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

³⁷ Bank of Montreal, (order dated June 20, 2011), 97 Federal Reserve Bulletin 24 (2d Quar. 2011); Bank of Montreal, 91 Federal Reserve Bulletin C14 (2005); Bank of Montreal, 80 Federal Reserve Bulletin 925 (1994).

³⁸ As noted in note 16, *supra*, the Board has considered the relevant restrictions on disclosure in the relevant jurisdictions in which Bank of Montreal operates, as well as the commitments Bank of Montreal provided regarding access to information, and determined that considerations related to access to information are consistent with approval.

³⁹ 12 U.S.C. § 1842(c)(2).

moderate-income (“LMI”) individuals and communities. The Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, and are providing access to banking products and services that meet the needs of customers and communities, including the potential impact of branch closures, consolidations, and relocations on that access. In addition, the Board reviews the records of the relevant depository institutions under the CRA.⁴⁰ The Board strongly encourages insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions’ safe and sound operation and their obligations under the CRA.⁴¹

In addition, the Board considers the banks’ overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, gender, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the acquiring institution’s business model and intended marketing and outreach, the combined organization’s plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of BMO Harris Bank and BOTW; the fair lending and compliance records of these banks; the supervisory views of the OCC, CFPB, and FDIC; confidential supervisory information; information provided by BMO; and public comments on the proposal.

⁴⁰ 12 U.S.C. § 2901 et seq.

⁴¹ See 12 U.S.C. § 2901(b).

Summary of Public Comments on Convenience and Needs

As noted above, the Board received a total of 200 comments on the proposal from community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals. The Board held a public meeting to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, both orally and in writing, through this process.

Many commenters supported the proposal.⁴² Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of BMO Harris Bank and BOTW as a result of increased resources and services provided by the combined organization. Many commenters commended both BMO Harris Bank and BOTW for their commitment to local community organizations, including through service by bank leadership on the boards of organizations, volunteering by officers and employees in local communities, and charitable contributions. Commenters also praised both banks' support of local communities through investments in affordable housing and in economic development. In addition, commenters praised BMO Harris Bank's and BOTW's support of small businesses, including small businesses run by women and minorities, the establishment of equity investment programs for underserved and minority communities, and the provision of capital and continued support during the pandemic to community organizations that serve minority and LMI communities. Some commenters commended BMO Harris

⁴² Some commenters alleged that BMO Harris Bank and BOTW solicited supportive comments from individuals and organizations that have received support from the banks. One commenter requested that the banks be required to disclose which individuals or organizations, if any, were solicited by the banks to testify. Some commenters also requested approval of the application be conditioned on disclosure of financial and other benefits that the banks may have provided to individuals or organizations who expressed support for the merger, and one commenter stated that such contributions should be considered in the Board's evaluation of such testimony. The Board invited comments from all members of the public and considered all timely, substantive comments on the application.

Bank's commitment to diversity, equity, and inclusion. Several commenters, including bank customers, stated that BMO Harris Bank offers high-quality customer service, innovative financial products, and affordable products for LMI and underbanked households.

The Board also received a number of comments opposing or otherwise expressing concerns about the proposal. Several commenters alleged that the merger would not meet the convenience and needs of communities in which the combined organization would operate. Some commenters expressed concerns that BMO Harris Bank and BOTW fail to serve the needs of small businesses by focusing on small business lending to larger companies with over \$1 million in revenue. One commenter asserted that both banks focus on providing credit to small businesses through larger loans and the use of credit cards, which usually have higher rates than other loan products. One commenter alleged that BMO Harris Bank does not meet the convenience and needs of minority communities. Several commenters alleged that BOTW lags peers in making charitable contributions. Some commenters alleged BMO Harris Bank and BOTW have excessive overdraft fees,⁴³ and one commenter also expressed concern that the proposed merger could result in job losses.⁴⁴

⁴³ On June 30, 2020, BMO Harris Bank announced it eliminated non-sufficient funds fees and overdraft transfer fees and reduced overdraft fees for consumer and small business banking accounts. See <https://newsroom.bmo.com/2022-06-30-BMO-Harris-Bank-Reduces-Consumer-and-Small-Business-Banking-Fees>. Several commenters asserted that the bank's overdraft fees should be entirely reduced or eliminated. The Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates; however, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. As discussed above, in evaluating the managerial resources of the organizations involved, the Board considers the institutions' records of compliance with consumer protection laws.

⁴⁴ The potential for job losses resulting from a merger is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973); see also U.S. Bancorp, FRB Order No. 2022-22 (October 14, 2022);

Commenters expressed concern with BMO Harris Bank’s record of home mortgage lending. Several commenters alleged disparities in BMO Harris Bank’s mortgage originations and in its denial rates to African American and Hispanic borrowers compared to peers. Commenters alleged that BMO Harris Bank’s mortgage lending exhibited significant disparities with respect to minority borrowers in Indianapolis/Marion County, Indiana;⁴⁵ Milwaukee, Wisconsin, and Wisconsin generally;⁴⁶ Chicago, Illinois; and Minneapolis, Minnesota.⁴⁷ One commenter requested that approval of the proposal be conditioned on the combined entity making commitments to improve its lending to underserved groups and neighborhoods. With respect to LMI borrowers, however, several commenters who opposed the proposal also

BB&T Corp., FRB Order No. 2019-16 (November 19, 2019); KeyCorp, FRB Order No. 2016-12 (July 12, 2016); Community Bank System, Inc., FRB Order No. 2015-34 (November 18, 2015); Wells Fargo & Co., 82 Federal Reserve Bulletin 445 (1996).

⁴⁵ Specifically, one commenter alleged that in Indianapolis/Marion County, Indiana, from 2018 to 2020, the bank’s share of mortgage applications from white applicants was greater than that of other lenders in the area and that its share of applications from African American applicants was less than that of peers during this period; that, of BMO Harris Bank’s mortgage applications from majority African American neighborhoods, the majority were from white applicants; and that BMO Harris Bank’s origination rate and denials exhibited disparities with respect to African American borrowers in the Indianapolis/Marion County area during this period, as compared to competitors.

⁴⁶ One commenter alleged that in 2021, in the Milwaukee–Waukesha, Wisconsin, Metropolitan Statistical Area (“MSA”) and in the city of Milwaukee, Wisconsin, BMO Harris Bank’s home loan origination rate for African American borrowers was deficient given the demographics of the area. Additionally, one commenter alleged, based on data reported for 2021 under the Home Mortgage Disclosure Act of 1975 (“HMDA”), 12 U.S.C. § 2801 *et seq.*, that there were disparities in the total number of mortgage loans made by BMO Harris Bank to African American borrowers compared to white borrowers in Wisconsin.

⁴⁷ One commenter alleged that BMO Harris Bank lagged in applications from and originations to African American borrowers in Minneapolis, Minnesota, as compared to peers. Several commenters alleged BMO Harris Bank’s mortgage origination and denial rates exhibited disparities with respect to African American and Hispanic borrowers in comparison to the bank’s peers in the Chicago, Illinois, area.

commended BMO Harris Bank for mortgage lending to LMI borrowers at a greater rate than peers.

Commenters also expressed concerns with the mortgage lending activities of BOTW. One commenter expressed concern that BOTW lagged behind its peers in making Federal Housing Administration loans and Department of Veterans Affairs home loans in California, and some commenters asserted that BOTW lagged behind its peers in making home loans to LMI borrowers in California. Commenters also alleged that BOTW's mortgage lending exhibited significant disparities with respect to minority borrowers in Denver, Colorado; San Francisco, California;⁴⁸ and in California generally.⁴⁹ One commenter alleged the merger would displace residents and perpetuate redlining in Los Angeles, California, due to BOTW's lending record, and another commenter expressed concern that BOTW had provided mortgage loans to "problematic landlords" that allegedly evicted tenants unlawfully in California. One commenter expressed concerns that conventional mortgages were not accessible to borrowers in Doña Ana, Bernalillo, and Sandoval counties, New Mexico, where BOTW operates branches. One commenter also alleged that BOTW imposed higher mortgage closing costs for borrowers who identified as Native Hawaiian or Other Pacific Islander. In contrast, another commenter commended BOTW for exceeding the performance of its peers in home mortgage lending to LMI census tracts, to majority-minority census tracts,

⁴⁸ One commenter alleged that BOTW had a lower rate of applications from African American borrowers in Denver than competitors, and BOTW had a lower origination rate to African American borrowers in San Francisco, as compared to peers. However, this commenter also noted that BOTW outperformed its peers in the rate of applications from African American borrowers in San Francisco and commended BMO Harris Bank for transparency regarding its lending performance.

⁴⁹ Some commenters alleged that mortgage lending by BOTW in California exhibited significant disparities in the number of applications from, loans to, and denials to African American and Hispanic borrowers in California. Commenters also alleged significant disparities in the share of applications received, withdrawn, approved, and denied for white neighborhoods in comparison to majority-minority neighborhoods in California.

and to Asian borrowers in California, and noted that BOTW matched peers in lending to American Indian or Alaska Native borrowers in California.

Commenters also requested that the Board condition its approval on BMO Harris Bank's establishment of a community benefits plan.⁵⁰ These commenters

⁵⁰ On November 28, 2022, BMO announced a community benefits plan under which, over a five-year period, it would lend, invest, or donate over \$40 billion nationally, including an estimated \$16 billion in California, to initiatives focused on small business and mortgage lending in LMI communities and communities of color. The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. *See, e.g., U.S. Bancorp*, FRB Order No. 2022-22 at 19 n.47 (October 14, 2022); *TriCo Bancshares*, FRB Order No. 2022-09 at 9 n.20 (March 1, 2022); *First Illinois Bancorp, Inc.*, FRB Order No. 2020-03 at 11 n.10 (August 26, 2020); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 Federal Reserve Bulletin 485 (2002); *Fifth Third Bancorp*, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

One commenter requested that the Board require BMO Harris Bank to make the terms of a community benefits agreement public, and other commenters requested that the Board, together with the OCC, monitor and enforce BMO Harris Bank's compliance with the terms of the agreement through CRA performance evaluations. As part of each federal banking agency's performance evaluation of the depository institution under the CRA, the federal banking agencies make public a description of the depository institution's activities to serve the credit needs of its AAs.

Additionally, one commenter referred to consumer complaints regarding BMO Harris Bank mortgage products; one commenter referred to a dispute involving a commercial loan; and another commenter submitted a complaint regarding a request for historical information about personal accounts at BMO Harris Bank. Complaints based on an individual customer transaction, such as a complaint relating to an individual loan denial or a loan foreclosure proceeding, generally are not considered to be substantive comments, *see* SR Letter 97-10 (April 24, 1997), <https://www.federalreserve.gov/boarddocs/srletters/1997/SR9710.htm>, and, thus, generally are not considered by the Board in its evaluation of the statutory factors governing the transaction.

requested BMO Harris Bank provide various types of community support pursuant to a community benefits plan.⁵¹

Businesses of the Involved Institutions and Response to Public Comments

BMO Harris Bank offers consumer and commercial loan and deposit products throughout its branch network across several states.⁵² These products and services include real estate, commercial, and consumer credit products; deposit products and services; and trust, investment, and financial advisory services to personal, business, corporate, and institutional clients. Additionally, BMO Harris Bank operates a line of business for truck and trailer finance. BOTW is primarily a commercial lender that also offers consumer banking products through its operations in 20 states.

BMO asserts that BMO Harris Bank and BOTW have a strong commitment to serving the needs of their communities and that the proposed transaction would result in benefits to the communities served by the combined organization. In response to concerns that the banks fail to meet the needs of small businesses, BMO states that half of small business lending by BMO Harris Bank was to small businesses with revenues of less than \$1 million annually and that, in California, BMO Harris Bank originated loans to small businesses at a rate greater than peers and exceeded peers in lending to small businesses in LMI census tracts. BMO also represents that BOTW offers a full suite of lending products to all its small business customers. BMO represents that BOTW's small

⁵¹ Specifically, commenters requested that the plan include provisions for increased home mortgage lending to LMI and minority borrowers and in LMI and majority-minority communities, small business lending to LMI and minority borrowers and in LMI and majority-minority communities, community development activities, philanthropic activities, faith-based outreach and lending to faith-based organizations, and management and supplier diversity. Some commenters also requested that BMO Harris Bank commit to offering certain low-cost banking products and services.

⁵² BMO Harris Bank has full-service branches in nine states. The bank has retail operations in Arizona, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, and Wisconsin, and has commercial operations in Texas.

business lending in LMI neighborhoods and to small businesses generally, in amounts up to \$250,000, exceeded that of BOTW's peers from 2018 to 2020.

BMO represents that both BMO Harris Bank and BOTW have strong home lending programs and offer products and programs targeted to the needs of minority and LMI individuals and businesses within each bank's CRA AAs. BMO represents that BMO Harris Bank and BOTW have comprehensive fair lending policies and procedures, including monitoring, testing, training, customer complaint processes, and internal controls.

With respect to BMO Harris Bank's performance in Chicago, Illinois, BMO asserts that BMO Harris Bank exceeded or matched peers in applications from and originations to African American borrowers and in applications from majority-minority census tracts in Chicago but acknowledges that the bank lagged slightly behind its peers in originations to Hispanic and Asian borrowers and in majority-minority census tracts. With respect to the bank's performance in Milwaukee, Wisconsin, and in Wisconsin generally, BMO represents that BMO Harris Bank exceeded or matched its peers in applications and originations to majority-minority census tracts and for applications and originations to Hispanic and Asian borrowers, but acknowledged that the bank lagged in applications from and originations to African American borrowers in those areas. BMO states that BMO Harris Bank's performance in Indianapolis/Marion County, Indiana, and in Minneapolis, Minnesota, lagged behind that of peers but represents that the bank was responsible for a small share and small total volume of lending in those areas. BMO acknowledges the bank's mortgage denial rate was higher than that of peers in all areas of concern for all groups, including white borrowers, and that the ratio of denials for African American, Hispanic, and Asian borrowers did not exhibit disparities compared to denials for white borrowers. BMO states that BMO Harris Bank has increased home lending to majority-minority census tracts in all areas over the past two years.

BMO states that BMO Harris Bank uses a centralized distribution strategy for home mortgage origination, rather than using in-market mortgage bankers, which impacts the number and type of applications received and results in higher denial rates for all borrowers across all AAs. BMO represents that, over the past year, BMO Harris Bank

has hired additional in-market mortgage bankers focused on LMI and majority-minority communities; worked with non-profits, realtors, and housing agencies to increase referrals of LMI and minority applicants; instituted an internal review system for proposed denials for LMI or minority borrowers; funded down payment assistance; enhanced the bank's marketing materials and customer experience; and developed a special purpose credit program for borrowers purchasing homes in majority-minority census tracts in Chicago, Illinois, and Phoenix, Arizona. BMO also represents that BMO Harris Bank is working to increase lending to minority borrowers in Chicago, Illinois, and Milwaukee, Wisconsin, through various programs.

In response to concerns about BOTW's mortgage lending activities in California generally, BMO represents that BOTW met or exceeded the performance of its peers with respect to minority borrowers and majority-minority census tracts. With respect to BOTW's mortgage lending performance in San Francisco, California, and Denver, Colorado, BMO states that BOTW received very few applications for single-family home purchase loans (72 and 30, respectively) and that an analysis of lending patterns in those cities would not be statistically meaningful.

BMO asserts that BMO Harris Bank continues to improve its home lending programs and that such work will be expanded, following consummation of the proposed transaction, to address the needs of communities currently served by BOTW. BMO also represents the combined organization will work to enhance home buyer products and programs to meet community needs.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation and the supervisory views of relevant federal supervisors, which in this case are the OCC, with respect to

BMO Harris Bank, and the FDIC, with respect to BOTW.⁵³ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.⁵⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large banks, such as BMO Harris Bank and BOTW, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans

⁵³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016). The OCC does not evaluate BMO Harris Central National Association under the CRA. See 12 CFR 25.01(c)(3).

⁵⁴ 12 U.S.C. § 2906.

based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;⁵⁵ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.⁵⁶ The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.⁵⁷

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions may not be available from public HMDA data.⁵⁸ Consequently, the Board requests additional information not available to the public that may be needed from the institution and evaluates disparities in the context of the additional information obtained regarding the lending and compliance record of an institution.

⁵⁵ Examiners also consider the number and amounts of small business and small farm loans made to businesses and farms with gross annual revenues of \$1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

⁵⁶ See 12 CFR 228.22(b).

⁵⁷ See 12 CFR part 228, subpart B.

⁵⁸ When conducting fair lending examinations, examiners analyze additional information not available to the public, such as credit scores, before reaching a determination regarding an institution's compliance with fair lending laws.

CRA Performance of BMO Harris Bank

BMO Harris Bank was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of April 6, 2020 (“BMO Harris Bank Evaluation”).⁵⁹ The bank received “Outstanding” ratings for the Lending, Investment, and Service Tests.

Lending Test

Examiners found that a high percentage of BMO Harris Bank’s loans were made in its AAs and that BMO Harris Bank used innovative and flexible lending programs to serve credit needs. According to examiners, BMO Harris Bank participated in numerous programs that supported affordable housing. Examiners rated the bank’s performance under the Lending Test as “Outstanding” in the states of Florida, Illinois, Indiana, Kansas, and Wisconsin, as well as in the Chicago MMSA, the Kansas City MMSA, and the Minneapolis MMSA, and “High Satisfactory” in the states of Arizona and Missouri, and in the St. Louis MMSA.

Areas of Concern to Commenters— In the Chicago MMSA, examiners found that the bank exhibited excellent lending performance based on good overall borrower distributions, good overall geographic distributions, and lending levels that reflected good responsiveness to AA credit needs. Examiners identified the bank as a

⁵⁹ The BMO Harris Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed data on home mortgage loans, small loans to businesses, small loans to farms, and community development activity from January 1, 2017, through December 31, 2019.

The BMO Harris Bank Evaluation covered BMO Harris Bank’s 33 AAs located in seven states and four multistate metropolitan statistical areas (“MMSAs”): Arizona; Florida; Illinois; Indiana; Kansas; Missouri; Wisconsin; the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin, MSA (“Chicago MMSA”); the Kansas City, Missouri–Kansas, MSA (“Kansas City MMSA”); the Minneapolis–St. Paul–Bloomington, Minnesota–Wisconsin, MSA (“Minneapolis MMSA”); and the St. Louis, Missouri–Illinois, MSA (“St. Louis MMSA”). The BMO Harris Bank Evaluation included a full-scope review of 14 of these AAs, with one or more AAs in every state, and all four MMSAs. A limited-scope review was conducted of the remaining 19 AAs.

leader in making community development loans in the AA. Examiners found those loans to be impactful and responsive to community needs.

Examiners found BMO Harris Bank's lending performance in the Indianapolis–Carmel–Anderson, Indiana, MSA (“Indianapolis MSA”) to be excellent. Examiners noted that the bank exhibited a good geographic distribution of loans in the AA. Examiners also noted that the bank exhibited a good distribution of loans among individuals of different income levels and businesses of different sizes. Examiners identified BMO Harris Bank as a leader in making community development loans and found that the bank's level of community development lending was excellent in this AA.

In the Minneapolis MMSA, examiners found that the bank exhibited excellent lending performance. Examiners found that the geographic and borrower distributions of the bank's originations and purchases of home mortgage loans and small loans to businesses were good. Examiners identified BMO Harris Bank as a leader in making community development loans and found that the bank's community development loans were effective in addressing community credit needs in this AA.

In Wisconsin, examiners found that the bank's lending levels reflected good responsiveness to AA credit needs. Examiners also found that the overall geographic distribution of loans was adequate and distribution of borrowers was good. In addition, examiners identified BMO Harris Bank as a leader in originating community development loans in Wisconsin and found that the bank's community development loans were effective in addressing community credit needs.

In the Milwaukee–Waukesha–West Allis, Wisconsin, MSA (“Milwaukee MSA”), examiners found that BMO Harris Bank's lending performance was excellent and that the bank's lending activity reflected good responsiveness to credit needs. Examiners noted that the bank's geographic distribution of home mortgage loans was adequate, geographic distribution of small loans to businesses was good, and geographic distribution of small loans to farms was adequate. Examiners found that the distribution of home mortgage loans among individuals of different income levels and the distribution of loans to businesses of different sizes were good and that the distribution of

loans to farms of different sizes was adequate. Examiners also found that the bank's level of community development lending was excellent and responsive to community credit needs. Examiners noted that the bank made extensive use of innovative or flexible lending practices in order to serve credit needs in this AA.

Investment Test

Examiners rated BMO Harris Bank's overall performance under the Investment Test as "Outstanding." Examiners found that the complexity and innovativeness of BMO Harris Bank's investments were typical for an institution of the bank's size and capacity. Examiners rated the bank's performance under the Investment Test as "Outstanding" in the states of Arizona, Illinois, Indiana, Kansas, Missouri, and Wisconsin, as well as the Chicago MMSA, the Kansas City MMSA, the Minneapolis MMSA, and the St. Louis MMSA, and "High Satisfactory" in the state of Florida.

Areas of Concern to Commenters—In the Chicago MMSA and the Indianapolis MSA, examiners found that BMO Harris Bank's investment performance was excellent. Examiners found that the bank had an excellent level of qualified investments and grants in these AAs. Examiners further found that the bank exhibited excellent responsiveness to credit and community economic development needs. Examiners noted that, in the Chicago MMSA, the bank was often in a leadership position.

In the Minneapolis MMSA, examiners found that the bank's investment performance was excellent. Examiners noted that the bank had an excellent level of qualified investments and grants and was often in a leadership position in the AA. Examiners further found that the bank's qualified investments were effective and responsive in addressing community credit needs.

In Wisconsin, examiners found that the bank had an excellent level of qualified investments, grants, and donations. Examiners also found that the bank's qualified investments were effective and responsive in addressing community credit needs.

In the Milwaukee MSA, examiners found that the bank's investment performance was excellent. Examiners also found that the bank had an excellent level of

qualified investments and grants, was often in a leadership position, and exhibited excellent responsiveness to credit and community economic development needs.

Service Test

Examiners rated BMO Harris Bank’s overall performance under the Service Test as “Outstanding.” Examiners rated the bank’s performance under the Service Test as “Outstanding” in the states of Illinois, Indiana, Kansas, and Wisconsin, as well as the Chicago MMSA, the Kansas City MMSA, and the Minneapolis MMSA, and “High Satisfactory” in the states of Arizona, Florida, and Missouri, and in the St. Louis MMSA.

Areas of Concern to Commenters—In the Chicago MMSA, the Indianapolis MSA, and the Minneapolis MMSA, examiners noted that the BMO Harris Bank’s service delivery systems were readily accessible to geographies and individuals of different income levels. Examiners also noted that, to the extent changes had been made, the bank’s opening and closing of branches had not adversely affected the accessibility of the bank’s delivery systems, particularly in LMI geographies or to LMI individuals in these AAs. Examiners found that the bank’s services did not vary in a way that inconvenienced customers in these AAs, particularly LMI customers or customers in LMI geographies. Examiners also found that BMO Harris Bank was a leader in providing community development services, such as financial education events, in the Chicago MMSA, the Indianapolis MSA, and the Minneapolis MMSA.

In Wisconsin, examiners found that the bank’s branches and alternative delivery systems were readily accessible to geographies and individuals of different incomes and responsive in helping the bank provide services across the community. Examiners identified the bank as a leader in providing community development services and noted that those services were effective and responsive in addressing community needs.

In the Milwaukee MSA, examiners found that BMO Harris Bank’s record of providing services was excellent. In finding that the bank’s branch distribution in Wisconsin was readily accessible to geographies of different income levels, examiners noted that in the Milwaukee MSA, the distribution of branches in low-income

geographies was close to, and in moderate-income geographies was below, the percentage of the population living within those geographies. However, examiners found that this was offset by the accessibility of several branches located in areas in close proximity to the low-income and moderate-income geographies. Examiners noted that the bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, in the AA. Examiners identified BMO Harris Bank as a leader in providing community development services in the AA.

BMO Harris Bank's Efforts Since the BMO Harris Bank Evaluation

BMO represents that, since the BMO Harris Bank Evaluation, BMO Harris Bank has remained actively engaged with the communities within its AAs. BMO states that in 2020, BMO Harris Bank made commitments of \$5 billion over five years, 75 percent of which are CRA-qualified, to address barriers faced by minority businesses, communities, and households and that the bank is working to improve inclusion in the financial services industry. BMO represents BMO Harris Bank took actions to support the needs of the communities within its AAs during the pandemic, including through short-term loan modifications and deferrals, assisting borrowers with Small Business Administration and Paycheck Protection Program loans, and providing other financial support to impacted communities and organizations. BMO states that, from January 2020 through November 2021, BMO Harris Bank participated in programs to promote home ownership for LMI individuals and communities in the bank's AAs and introduced several new products to assist home buyers. BMO represents that, over the same period, the bank offered small business lending products and provided community development loans, including several innovative transactions involving state and federal tax credit programs to support economic development and affordable housing. BMO states

that BMO Harris Bank continued to provide community service to community organizations during this period.

CRA Performance of BOTW

BOTW was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the FDIC, as of September 21, 2020 (“BOTW Evaluation”).⁶⁰ The bank received a “High Satisfactory” rating for the Lending Test and “Outstanding” ratings for the Investment and Service Tests.

Lending Test

With respect to the Lending Test, examiners found that BOTW’s lending levels reflected good responsiveness to AA credit needs and that the bank made a high percentage of loans in its AAs. Examiners noted that the geographic distribution of the bank’s loans reflected good penetration throughout the bank’s AAs. Examiners found that, given the product lines offered by the bank, the bank’s distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different sizes. Examiners also found that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged individuals, low-income individuals, and very small businesses in its AAs. Examiners noted that BOTW made extensive use of innovative and flexible lending practices to

⁶⁰ The BOTW Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed data on home mortgage loans, small loans to businesses, small loans to farms, and community development activity from August 21, 2017, through September 31, 2020.

The BOTW Evaluation covered BOTW’s 60 AAs located in 20 states, including four MMSAs: Arizona; California; Colorado; Idaho; Iowa; Kansas; Minnesota; Missouri; Nebraska; Nevada; New Mexico; New York; North Dakota; Oklahoma; Oregon; South Dakota; Utah; Washington; Wisconsin; Wyoming; Fargo, North Dakota–Minnesota, MSA (“Fargo MMSA”); Kansas City MMSA; Omaha–Council Bluffs, Nebraska–Iowa, MSA (“Omaha MMSA”); and Portland–Vancouver–Hillsboro, Oregon–Washington, MSA (“Portland MMSA”). The BOTW Evaluation included a full-scope review of 22 of these AAs. A limited-scope review was conducted of the remaining 38 AAs.

meet the credit needs in its AAs and identified BOTW as a leader in making community development loans.

Areas of Concern to Commenters—In California, BOTW received an overall “High Satisfactory” rating for the Lending Test. Examiners found that the bank’s lending levels reflected good responsiveness to AA credit needs. Examiners also found that the overall geographic and borrower distribution of the bank’s loans was good. In addition, examiners noted that the bank was a leader in originating community development loans.

In the San Jose–San Francisco–Oakland, California, Combined Statistical Area (“San Francisco CSA”),⁶¹ examiners found BOTW’s performance under the Lending Test to be consistent with the bank’s “High Satisfactory” rating in California. Examiners noted that BOTW’s lending levels reflected good responsiveness to AA credit needs. Examiners also found that the geographic distribution of the bank’s loans and the distribution of the bank’s borrowers reflected good penetration throughout the AA. Examiners noted that BOTW made a relatively high level of community development loans in this AA.

In the Los Angeles–Long Beach, California, Combined Statistical Area (“Los Angeles CSA”),⁶² examiners found that BOTW’s lending levels reflected adequate responsiveness to AA credit needs. Examiners also found that the geographic distribution of the bank’s loans reflected excellent penetration throughout the AA. Examiners noted that the distribution of the bank’s borrowers among individuals and

⁶¹ The San Francisco CSA consists of the following MSAs: Merced, California, MSA; Modesto, California, MSA; Napa, California, MSA; San Francisco–Oakland–Berkeley, California, MSA; San Jose–Sunnyvale–Santa Clara, California, MSA; Santa Cruz–Watsonville, California, MSA; Santa Rosa–Petaluma, California, MSA; Stockton, California, MSA; and Vallejo, California, MSA.

⁶² The Los Angeles CSA consists of the following MSAs: Los Angeles–Long Beach–Anaheim, California, MSA; Oxnard–Thousand Oaks–Ventura, California, MSA; and Riverside–San Bernardino–Ontario, California, MSA.

businesses reflected adequate penetration throughout the AA. Examiners noted that BOTW was a leader in making community development loans in this AA.

In New Mexico, BOTW received an overall “High Satisfactory” rating for the Lending Test. Examiners found that the bank’s lending levels reflected good responsiveness to AA credit needs. Examiners also found that the overall geographic and borrower distribution of the bank’s loans was good. In addition, examiners identified BOTW as a leader in originating community development loans in the state.

In the Denver-Aurora, Colorado, Combined Statistical Area (“Denver CSA”),⁶³ examiners found BOTW’s performance under the Lending Test to be consistent with the bank’s “High Satisfactory” rating in Colorado. Examiners noted that BOTW’s lending levels reflected good responsiveness to AA credit needs, the geographic distribution of loans reflected good penetration throughout the Denver CSA, and the distribution of borrowers reflected adequate penetration. Examiners also noted that the majority of the bank’s community development lending in Colorado was in the Denver CSA.

Investment Test

With respect to the Investment Test, examiners found that BOTW had an excellent level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, often with the bank in a leadership position. Examiners noted that the bank exhibited excellent responsiveness to credit and community development needs. Examiners found that the bank made extensive use of innovative and complex investments to support community development initiatives.

Areas of Concern to Commenters—In California, BOTW received an overall “Outstanding” rating for the Investment Test. Examiners found the bank’s level of qualified community development investments and grants to be excellent throughout

⁶³ The Denver CSA consists of the following MSAs: Boulder, Colorado, MSA; Denver–Aurora–Lakewood, Colorado, MSA; and Greeley, Colorado, MSA.

the bank's California AAs and noted that the bank often was in a leadership position. Examiners noted that the bank exhibited excellent responsiveness to credit and community development needs, including for affordable housing. Examiners also found that the bank made extensive use of innovative and complex investments to support community development initiatives. These same findings also were made with respect to the San Francisco CSA and the Los Angeles CSA.

In the San Francisco CSA and Los Angeles CSA, examiners found BOTW's performance under the Investment Test to be consistent with the bank's "Outstanding" rating in California. Examiners further found that BOTW's level of qualified community development investments and grants to be excellent. Examiners noted that the bank exhibited excellent responsiveness to credit and community development needs. Examiners also found that the bank made extensive use of innovative and complex investments in these AAs.

In New Mexico, BOTW received an overall "Outstanding" rating for the Investment Test. Examiners found that the bank made an excellent level of qualified community development investments and grants throughout its New Mexico AAs, often in a leadership position. Examiners noted that the bank exhibited excellent responsiveness to credit and community development needs, including for affordable housing. Examiners found that BOTW made extensive use of innovative and complex investments to support community development initiatives in the state.

In the Denver CSA, examiners found BOTW's performance under the Investment Test to be consistent with the bank's "Outstanding" rating in Colorado. Examiners noted that the bank made an excellent level of qualified community development investments and grants in the Denver CSA. Examiners found that the bank exhibited excellent responsiveness to credit and community development needs and made

extensive use of innovative and complex investments to support community development initiatives in this AA.

Service Test

With respect to the Service Test, examiners found that BOTW's delivery systems were accessible to essentially all portions of the bank's AAs. Examiners noted that the bank's opening and closing of branches had not adversely affected the accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals. Examiners found that the bank's services were appropriately tailored to the convenience and needs of the bank's AAs, particularly LMI geographies and individuals. Examiners identified the bank as a leader in providing community development services.

Areas of Concern to Commenters—In California, BOTW received an overall "Outstanding" rating for the Service Test. Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's California AAs. Examiners also found that the bank's opening and closing of branches had not adversely affected the accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that services, including, where appropriate, business hours, were tailored to the convenience and needs of the bank's California AAs, particularly LMI geographies and individuals. Examiners identified BOTW as a leader in providing community development services. These same findings also were made with respect to the San Francisco CSA and the Los Angeles CSA. For the Los Angeles CSA, however, it was noted that service hours by BOTW employees had decreased from the prior CRA evaluation where BOTW had been considered a leader, although examiners found that BOTW employees still provided a relatively high level of CD services in the Los Angeles CSA.

In New Mexico, BOTW received an overall "Outstanding" rating for the Service Test. Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's New Mexico AAs. Examiners also found that the bank's opening and closing of branches had improved the accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals. Examiners

noted that the bank's services did not vary in a way that inconvenienced certain portions of the bank's New Mexico AAs, particularly LMI geographies and individuals.

Examiners identified BOTW as a leader in providing community development services in the state.

In the Denver CSA, examiners found BOTW's performance under the Service Test to be consistent with the bank's "Outstanding" rating in Colorado. Examiners found that the bank's delivery systems were readily accessible to all portions of the Denver CSA. Examiners noted that the bank's services, including business hours, were tailored to the convenience and needs of the AA, particularly LMI geographies and individuals. Examiners identified BOTW as a leader in providing community development services in the AA.

BOTW's Efforts Since the BOTW Evaluation

BMO represents that, since its most recent CRA evaluation, BOTW has remained active in serving the needs of its communities. BMO states that BOTW engaged in several initiatives to support customers and communities within its AAs during the pandemic, including through direct and indirect financial support, assistance with the Small Business Administration and Paycheck Protection Program process, and short-term loan deferrals and modifications. BMO reports that, from January 2020 through November 2021, BOTW participated in a number of programs and partnerships to promote homeownership for LMI individuals and in LMI census tracts, many of which were innovative. BMO represents that it enhanced its small business application platform, provided resources to support small business development efforts, and continued to engage in community development lending targeting revitalization and stabilization efforts. BMO also represents that BOTW employees were active in volunteer service efforts during this period.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of BMO Harris Bank; with the FDIC regarding the CRA, consumer compliance, and fair lending records of BOTW; and

with the CFPB regarding the consumer compliance and fair lending records of both banks. The Board considered the results of the most recent consumer compliance examinations of BMO Harris Bank and BOTW, which included reviews of the banks' compliance management programs and compliance with consumer protection laws and regulations, including fair lending.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether BMO has the experience and resources to ensure the combined organization would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. This includes, for example, the combined organization's business model and intended marketing and outreach and existing and anticipated product and service offerings in the communities to be served by the organization; any additional plans the combined organization has for meeting the needs of its communities following consummation; and any other information the Board deems relevant. In this case, BMO has provided information on how the combined organization would meet the convenience and needs of the communities to be served. Specifically, BMO represents that the customers and communities served by the combined organization would benefit from access to expanded products and services as a result of the proposed transaction. BMO asserts that BOTW's retail banking model would complement BMO Harris Bank's focus on commercial lending and other activities. BMO also represents that current BOTW customers would have access to broader digital banking and ATM access as well as enhanced payments and financial management tools.

BMO represents that several products and services currently offered by BMO Harris Bank would be made available to BOTW customers through the combined organization and such products and services would help to meet the needs of LMI

customers. This would include BMO Harris Bank's Credit Builder program, which is a loan product that helps customers build or improve their credit score; BMO Harris Bank's SmartMoney Checking product, an affordable checking account that has no overdraft or nonsufficient funds fees and requires no minimum balance; BMO Harris Bank's Savings Builder account, which is a no-fee account that provides customers with cash rewards for meeting a monthly savings goal; the Neighborhood Home Loan Product, which is a loan program for LMI borrowers; BMO Harris Bank's Welcome Home Grants/Special Purpose Credit Program, which offers self-funded down payment grants and other assistance to LMI homebuyers; a Freddie Mac mortgage product with Borrower Smart down payment assistance; and Housing Finance Agency and local down payment assistance programs.

In addition, BMO states that BMO Harris Bank would offer additional products currently offered by BOTW, but not offered by BMO Harris Bank, including Department of Veterans Affairs mortgage loans and secured credit cards for consumers. Additionally, BMO states BMO Harris Bank customers would be able to take advantage of specialized financing activities currently offered by BOTW, such as marine, recreational vehicles, and agribusiness financing. BMO states that certain redundant products may be consolidated as a result of the proposed transaction but that the combined organization would offer choices comparable to the products currently offered by each bank.

BMO represents that BMO Harris Bank would expand on each bank's community development activities and currently has no plans to discontinue any community development activities of either bank upon consummation. BMO represents that BMO Harris Bank would be able to leverage its strong performance in community development lending and investment to improve performance in BOTW markets. BMO represents that it expects to expand a community development entity that allocates federal new market tax credits for economic development and social service projects to cover BOTW's markets, including rural markets. BMO also represents that the combined organization would deploy additional community investment capital in BOTW markets,

including by expanding its investments in bonds to school districts and municipalities that assist with infrastructure for LMI communities or constituents, and through loans to municipalities to aid with infrastructure and other needs, especially those that benefit LMI geographies or other underrepresented groups. BMO represents that it would increase dedicated CRA loan originators in current BOTW markets, and that the combined organization would continue to invest in low-income housing tax credits, CRA-qualified private equity funds, Small Business Investment Company-licensed funds, and Community Development Financial Institutions.

Branch Closures

Physical branches remain important to many banking organizations' ability to meet the credit needs of the local communities in which they operate. When banking organizations combine, whether through acquisitions, mergers, or consolidations, the combination has the potential to increase or to reduce consumers' and small businesses' access to available credit and other banking services. Although the Board does not have the authority to prohibit a bank from closing a branch, the Board focuses on the impact of expected branch closures, consolidations, and relocations that occur in connection with a proposal on the convenience and needs of the communities to be served by the resulting institution. In particular, the Board considers the effect of any closures, consolidations, or relocations on LMI communities.

Federal banking law provides a specific mechanism for addressing branch closings, including requiring that a bank provide notice to the public and the appropriate federal supervisory agency before a branch is closed.⁶⁴ In addition, the federal banking supervisory agencies evaluate a bank's record of opening and closing branches,

⁶⁴ See 12 U.S.C. § 1831r-1. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.⁶⁵

Several commenters expressed concern with BMO Harris Bank's and BOTW's branch closures in recent years. One commenter alleged that BMO Harris Bank decreased its branch presence in LMI and majority-minority neighborhoods and that BMO Harris Bank closed significantly more branches during the pandemic as compared to its branch closures in previous periods. One commenter alleged BMO Harris Bank does not have branches in majority African American neighborhoods in Indianapolis, Indiana. Commenters also alleged BOTW closed more branches in LMI neighborhoods than in middle- and upper-income neighborhoods from 2017 through 2021, and another commenter alleged BOTW closed more branches in majority-minority neighborhoods than in majority white neighborhoods. One commenter requested that approval of the proposed transaction be conditioned on compliance by BMO Harris Bank with BMO's representation that the bank would not close or consolidate BOTW branches in connection with the transaction; another commenter requested the Board monitor BMO Harris Bank's compliance with this representation.

In response to comments regarding prior branch closures, BMO asserts that most of BMO Harris Bank's and BOTW's branch consolidations and closures occurred in middle- or upper-income census tracts and in majority white census tracts. Although BMO Harris Bank closed a number of branches in recent years, particularly in 2020 and 2021, the bank represents that the decisions were based on an analysis of branch locations, usage data, traffic patterns, population shifts, market share, and other factors, focusing in particular on branches located within a short distance from another branch. Additionally, BMO Harris Bank states that it does not expect to consolidate or close any BOTW branches in connection with the proposed transaction. BMO represents that

⁶⁵ See, e.g., 12 CFR 228.24(d)(2). The OCC, as the primary federal supervisor of BMO Harris Bank, would review branch closures in evaluating the CRA performance of the combined organization.

BMO Harris Bank has pre-existing plans to close or consolidate, as well as to open, branches, and represents that BOTW also has pre-existing plans to relocate and open branches. BMO represents that BMO Harris Bank will continue to follow its branch closing and consolidation policy and adhere to all regulatory requirements in connection with any possible future branch actions. With respect to its branches in Indianapolis/Marion County, Indiana, BMO represents that it has nine branches in LMI census tracts, one branch located in a majority-minority census tract, and nine branches located in census tracts with minority populations between 30 percent and 50 percent.

In the BMO Harris Bank Evaluation, examiners found BMO Harris Bank's branches were readily accessible to individuals and communities of different incomes in its AAs and that BMO Harris Bank's opening and closing of branches had not adversely affected accessibility, particularly in LMI communities and to LMI individuals in AAs where the bank opened or closed branches. In the BOTW Evaluation, examiners found that BOTW's service delivery systems were accessible to nearly all portions of its AAs and that the bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI communities and to LMI individuals. The Board has consulted with the OCC regarding BMO Harris Bank's post-consummation branching plans.

The Board has considered all the facts of record relating to branch closures, consolidations, and relocations, including the records of the relevant depository institutions under the CRA and fair lending laws in relation to branch closures; the institutions' policies and procedures on and records of compliance with federal banking law regarding branch closures; the views of the OCC and FDIC; confidential supervisory information; information provided by BMO; and public comments on the proposal. Based on that review, the Board concludes that BMO Harris Bank has established policies, programs, and procedures designed to ensure the bank's branching network is consistent with the bank's CRA and fair lending obligations and to mitigate the impact of any branch closures on communities to be served by the combined bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of BMO Harris Bank and BOTW under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory information provided by the OCC, FDIC, and CFPB; information provided by BMO; the public comments on the proposal; and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability Considerations

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁶⁶

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the combined organization and the incremental effect of the transaction on the systemic footprint of the acquiring bank holding company. These metrics include measures of the size of the combined organization, the availability of substitute providers for any critical products and services offered by the combined organization, the interconnectedness of the combined organization with the banking or financial system, the extent to which the combined organization contributes to the complexity of the financial system, and the extent of the cross-border activities of the combined organization.⁶⁷ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors that are indicative of the relative degree of difficulty of

⁶⁶ 12 U.S.C. § 1842(c)(7).

⁶⁷ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

resolving the combined organization. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.⁶⁸

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The Board reviewed publicly available data, comments received from the public, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

Size. An organization’s size is one important indicator of the risk that the organization may pose to the U.S. banking or financial system. Congress has imposed specific size-based limitations on the amount of deposits and liabilities a banking organization may control.⁶⁹ In addition, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act,⁷⁰ requires the Board to apply enhanced prudential standards to bank holding companies with \$250 billion or more in

⁶⁸ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

BMO currently is a triennial full filer under the resolution plan rule, 12 CFR part 243 and 381, and the firm is scheduled to file its next resolution plan in July 2024. BMO has committed to the Board that it will, no later than the date that is six months after the date of consummation of the proposal, provide the Board and FDIC with an interim update to its resolution plan.

⁶⁹ 12 U.S.C. §§ 1842(d)(2)(A) and 1852 (imposing a 10 percent nationwide deposit limit and a 10 percent nationwide liabilities limit on potential combinations by banking organizations).

⁷⁰ Pub. L. No. 111-203, 124 Stat. 1376, 1423–32 (2010); Pub. L. No. 115-174, 132 Stat. 1296 (2018).

total consolidated assets.⁷¹ Size also is among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.⁷²

In this case, the Board has considered measures of the size of BMO's combined U.S. operations ("CUSO")⁷³ relative to the U.S. financial system if the proposed transaction were to be completed, including assets, liabilities,⁷⁴ total exposures, and U.S. deposits. As a result of the proposed acquisition, BMO's CUSO would become the 14th largest financial institution⁷⁵ in the United States based on total assets.⁷⁶ Its total exposures would account for 1.56 percent of the total for institutions that file the FR Y-15 form.⁷⁷ Based on deposits, BMO's CUSO would become the 13th largest U.S.

⁷¹ See 12 U.S.C. § 5365.

⁷² See 12 U.S.C. § 5365(a)(2)(A). The Board has previously used size as a simple measure of a banking organization's potential systemic impact and has differentiated the stringency of capital and liquidity requirements based on total consolidated asset size.

⁷³ See definition of "combined U.S. operations" at 12 CFR 252.2. The term refers collectively to the U.S. branches and agencies of a foreign banking organization as well as its U.S. subsidiaries.

⁷⁴ The Board has considered both consolidated liabilities on the combined organization's pro forma balance sheet and liabilities as computed under the limitations on consolidated liabilities in section 622 of the Dodd-Frank Act. See 12 U.S.C. § 1852.

⁷⁵ In this context, a U.S. financial institution includes all insured depository institutions, insured depository institution holding companies, nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act, and any foreign bank or company treated as a bank holding company. See 12 U.S.C. § 1852(a)(2).

⁷⁶ Financial information in this section is reported as of June 30, 2022, unless otherwise noted.

⁷⁷ The FR Y-15 form collects data on systemic importance indicators, including total exposures, which the Board used in its assessment of the financial stability implications of the proposal. For this reason, this order often discusses the financial stability metrics of BMO's pro forma post-transaction CUSO relative to institutions that file the FR Y-15 form. The panel of institutions that file the FR Y-15 form consists of U.S. bank holding companies ("BHCs") and covered savings and loan holding companies with total consolidated assets of \$100 billion or more; foreign banking organizations ("FBOs") with combined U.S. assets of \$100 billion or more, including, if applicable, any U.S. intermediate holding company ("IHC") of the FBO regardless of the size of the IHC; and

financial institution, with 1.32 percent of total U.S. deposits. These measures suggest that, although the combined organization would be large on an absolute basis, its shares of U.S. financial system assets, liabilities, total exposures, and deposits would remain moderate, and its shares of national deposits and liabilities would fall well below the 10 percent limitations set by Congress.

In addition, the Board has considered other factors, both individually and in combination with size, to evaluate the likely impact of this transaction on the stability of the U.S. banking or financial system.

Substitutability. The Board has considered whether BMO or BancWest engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress. The Board primarily evaluated the roles of BMO and BancWest in payments activities, custody activities, and securities underwriting activities. Neither BMO nor BancWest is a major provider of these services. The combined organization would account for approximately 0.79 percent of payments activities, 0.21 percent of assets under custody, and 0.78 percent of securities underwriting activities of the total reported by institutions that file the FR Y-15 form. For these activities, BMO's CUSO would have a small share on a nationwide basis, and numerous competitors would remain.

Interconnectedness. The Board has reviewed data to determine whether financial distress experienced by BMO's post-transaction CUSO could create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Board considered measures of interconnectedness between BMO's pro forma post-transaction CUSO and the rest of the

U.S.-based organizations designated as Global Systemically Important Banks ("G-SIBs") that do not otherwise meet the consolidated assets threshold. FR Y-15 data are as of June 30, 2022.

financial system during financial distress, such as potential direct losses to counterparties, asset-price declines due to fire sales, and contagion effects. The shares of U.S. intra-financial system assets and liabilities associated with BMO's CUSO, 3.58 percent and 1.39 percent, respectively, would increase to 3.59 percent and 1.57 percent, respectively, as a result of the proposed transaction, and the share of U.S. short-term wholesale funding associated with BMO's CUSO would increase from 1.45 to 1.69 percent of the total reported by institutions that file the FR Y-15 form.

Complexity. The Board has considered the extent to which, if the proposal were to be consummated, BMO's CUSO would contribute to the overall complexity of the U.S. banking or financial system. In this analysis, the Board considered the level of over-the-counter derivatives exposures ("OTC derivatives"), holdings of Level 3 assets,⁷⁸ and volume of trading book and available-for-sale securities at both BMO's CUSO and BancWest. On a pro forma post-transaction basis, the level of notional OTC derivatives exposures at BMO's CUSO would represent less than 0.04 percent of the total for institutions that file the FR Y-15 form. The amount of Level 3 assets at BMO's post-transaction CUSO would represent approximately 0.45 percent of the total for the same group of institutions. Finally, the amount of trading and available-for-sale securities at BMO's post-transaction CUSO would account for approximately 0.55 percent of the total for that group.

Cross-Border Activity. The Board has reviewed the cross-border activities of BMO's CUSO and BancWest to determine whether the cross-border presence of the combined organization would create difficulties in coordinating any resolution of the firm, which could significantly increase the risk to the stability of the U.S. banking or

⁷⁸ Level 3 assets are defined in the Statement of Financial Accounting Standards No. 157 ("Fair Value Measurements") as assets whose accounting valuations are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These assets are deemed complex to evaluate and cannot be measured at fair value because there is not a clear market price or a standard valuation model. A higher share of these assets could lead to disorderly resolution of an entity in case of failure.

financial system. At consummation, BMO's CUSO would account for less than 0.86 percent of either total cross-border claims or total cross-border liabilities of institutions filing the FR Y-15.

Financial Stability Factors in Combination. The Board has assessed the foregoing factors individually and in combination to determine whether interactions among them might mitigate or exacerbate risks suggested by looking at them individually. The Board also has considered whether the proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risks.⁷⁹

As discussed above, although the combined organization would be large on an absolute basis, the combined organization would have modest shares of U.S. financial system assets, liabilities, total exposures, and deposits. In addition, the combined organization would not be a critical services provider and would have a low degree of complexity. While BMO's CUSO would continue to exhibit relatively high interconnectedness after the proposed transaction, the changes associated with this proposal in the other elements relevant to the financial stability analysis are small. In addition, BFC is projected to become subject to additional enhanced prudential standards as a Category III U.S. intermediate holding company after consummation of the proposed transaction. These enhanced prudential standards are expected to offset the modestly increased systemic risks from the transaction.

The Board further considered the G-SIB method 1 score of BMO's pro forma post-transaction CUSO. The G-SIB method 1 score is a measure of an institution's systemic importance and is a weighted sum of an institution's indicators of size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability.⁸⁰ On consummation of the proposal, BMO's CUSO would have a G-SIB method 1 score of 29 basis points, well below the threshold (130 basis points) that identifies a financial

⁷⁹ See 12 U.S.C. § 5365.

⁸⁰ See 80 Federal Register 49082 (August 14, 2015).

institution as a G-SIB. This score is close to the current method 1 score for BMO's CUSO of 26, indicating that the transaction would not increase materially its systemic importance. Further, the transaction would result in a corresponding reduction in the G-SIB method 1 score of the CUSO of BNP Paribas from 24 to 21.

The Board also has considered other measures that are suggestive of the degree of difficulty with which the combined organization could be resolved in the event of a failure, such as the organizational and legal complexity and cross-border activities of the combined organization. These measures suggest that the combined organization would be significantly less complicated to resolve than the largest U.S. financial institutions.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system.⁸¹ Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

The Board had considered that consolidation among large banking organizations, including top tier U.S. IHCs of foreign banking organizations, may pose resolvability and related financial stability concerns warranting further consideration. As discussed in the joint Board-FDIC advance notice of proposed rulemaking ("ANPR") issued on October 24, 2022,⁸² the Board expects to consider these questions broadly through a rulemaking process.

⁸¹ Several commenters alleged concerns regarding "systemic risk" without providing further detail.

⁸² The ANPR is available at <https://www.govinfo.gov/content/pkg/FR-2022-10-24/pdf/2022-23003.pdf>.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁸³ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by BMO with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The

⁸³ A commenter requested that the Board hold additional public meetings in certain cities in California. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing or meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to provide testimony and submit comments on the proposal. As noted above, the Board and the OCC held a virtual public meeting on the application, at which 76 individuals gave testimony. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The request does not identify disputed issues of fact material to the Board's decision that would be clarified by further public meetings. In addition, the request does not demonstrate why written comments do not present the commenter's views accurately or why further meetings otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that further public meetings are not required or warranted in this case. Accordingly, the request for further public meetings on the proposal are denied.

In addition, one commenter requested a further extension of the comment period for the proposal until after the transcript of the public meeting was posted on the Board's public website. As noted above, the Board provided for a comment period of more than 170 days. During this time, the commenters submitted detailed comments in writing regarding the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter did not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the comment period.

Board's approval also is conditioned on receipt by BMO of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting under delegated authority.

By order of the Board of Governors,⁸⁴ effective January 17, 2023.

(Signed) Ann E. Misback

Ann E. Misback
Secretary of the Board

⁸⁴ Voting for this action: Chair Powell, Vice Chair Brainard, Vice Chair for Supervision Barr, Governors Bowman, Waller, Cook and Jefferson.

Appendix I

| Deposit Data in States where BMO and BancWest Both Operate | | | | | | | | | |
|---|--|-----------------------------------|---------------------------|--|-----------------------------------|---------------------------|--|-----------------------------------|---------------------------|
| Data are as of June 30, 2022. ⁸⁵ Percent represents the portion of all deposits held by insured depository institutions in the state. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks. | | | | | | | | | |
| State | BMO | | | BancWest | | | Merged Entity | | |
| | Rank of Insured Depository Institution by Deposits | Deposits Controlled (in billions) | Percent of Total Deposits | Rank of Insured Depository Institution by Deposits | Deposits Controlled (in billions) | Percent of Total Deposits | Rank of Insured Depository Institution by Deposits | Deposits Controlled (in billions) | Percent of Total Deposits |
| Arizona | 7th | \$5.0 | 2.2 | 11th | \$1.9 | 0.8 | 6th | \$6.9 | 3.0 |
| Kansas | 19th | \$1.1 | 1.1 | 34th | \$0.7 | 0.7 | 12th | \$1.8 | 1.8 |
| Minnesota | 5th | \$8.2 | 2.8 | 22nd | \$1.2 | 0.4 | 5th | \$9.3 | 3.2 |
| Missouri | 18th | \$2.0 | 0.8 | 81st | \$0.4 | 0.2 | 14th | \$2.4 | 1.0 |
| Washington | 73rd | <\$0.1 | <0.1 | 41st | \$0.5 | 0.2 | 40th | \$0.5 | 0.2 |
| Wisconsin | 2nd | \$24.3 | 11.9 | 187th | <\$0.1 | <0.1 | 2nd | \$24.3 | 11.9 |

⁸⁵ The data do not reflect the recently approved transaction by U.S. Bancorp, Minneapolis, Minnesota, to acquire MUFG Union Bank, San Francisco, California.

Appendix II

| BMO/BancWest Banking Markets | | | | | | |
|---|------|--------------------|---------------------------|---------------|---------------|---------------------------------|
| Consistent with Board Precedent and DOJ Bank Merger Guidelines | | | | | | |
| Data are as of June 30, 2022. ⁸⁶ All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions. | | | | | | |
| Phoenix, Arizona — Phoenix metropolitan area in northwestern Pinal County and Maricopa County, Arizona. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 5 | \$4.2B | 2.4 | 1619 | 1 | 61 |
| <i>BancWest</i> | 31 | \$326.5M | 0.2 | | | |
| <i>BMO Post-Consummation</i> | 5 | \$4.6B | 2.6 | | | |
| Prescott, Arizona — Central Yavapai County, Arizona. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 6 | \$186.3M | 4.3 | 1621 | 4 | 11 |
| <i>BancWest</i> | 12 | \$22.0M | 0.5 | | | |
| <i>BMO Post-Consummation</i> | 6 | \$208.3M | 4.8 | | | |
| Tucson, Arizona — Tucson metropolitan area in Pima County, Arizona. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 8 | \$466.2M | 2.0 | 1780 | 21 | 18 |
| <i>BancWest</i> | 6 | \$1.1B | 5.0 | | | |
| <i>BMO Post-Consummation</i> | 4 | \$1.6B | 7.0 | | | |
| Minneapolis-Saint Paul, Minnesota-Wisconsin — Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota Counties, Minnesota; Lent, Chisago Lake, Shafer, Wyoming, and Franconia townships in Chisago County, Minnesota; Blue Hill, Baldwin, Orrock, Livonia, and Big Lake townships and the city of Elk River in Sherburne County, Minnesota; Monticello, Buffalo, Rockford, and Franklin townships and the cities of Otsego, Albertville, Hanover and Saint Michael in Wright County, Minnesota; Derrynane, Lanesburgh and Montgomery townships and Montgomery city in Le Sueur County, Minnesota; and Hudson township in Saint Croix County, Wisconsin. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 3 | \$8.2B | 3.8 | 2339 | 2 | 118 |
| <i>BancWest</i> | 25 | \$577.1M | 0.3 | | | |
| <i>BMO Post-Consummation</i> | 3 | \$8.8B | 4.0 | | | |
| Kansas City, Missouri-Kansas — Cass, Clay, Jackson, Lafayette, Platte, and Ray Counties, Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden and Kingsville in Johnson County, Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Linn, Miami, and Wyandotte Counties, Kansas. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 14 | \$1.2B | 1.5 | | | |

⁸⁶ The data do not reflect the recently approved transaction by U.S. Bancorp, Minneapolis, Minnesota, to acquire MUFG Union Bank, San Francisco, California.

| | | | | | | |
|--|-------------|---------------------------|----------------------------------|----------------------|----------------------|--|
| <i>BancWest</i> | 24 | \$609.8M | 0.7 | 1031 | 2 | 114 |
| <i>BMO Post-Consummation</i> | 10 | \$1.8B | 2.2 | | | |
| Seattle-Tacoma, Washington — King, Pierce, and Snohomish Counties, Washington; Camano Island and South Whidbey Island CCDs in Island County, Washington; and Bainbridge Island CCD in Kitsap County, Washington. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 49 | \$0.2M | 0.0 | 1338 | 0 | 56 |
| <i>BancWest</i> | 32 | \$278.1M | 0.2 | | | |
| <i>BMO Post-Consummation</i> | 32 | \$278.3M | 0.2 | | | |
| La Crosse, Wisconsin-Minnesota — La Crosse County, Wisconsin; the Towns or Townships of Dodge, Trempealeau, Caledonia, Ettrick, and Gale in Trempealeau County, Wisconsin; the Towns of Curran, Springfield, Franklin, North Bend, and Melrose in Jackson County, Wisconsin; and Houston County, Minnesota. | | | | | | |
| | Rank | Amount of Deposits | Market Deposit Shares (%) | Resulting HHI | Change in HHI | Remaining Number of Competitors |
| <i>BMO Pre-Consummation</i> | 12 | \$127.0M | 3.0 | 889 | 6 | 21 |
| <i>BancWest</i> | 17 | \$40.8M | 1.0 | | | |
| <i>BMO Post-Consummation</i> | 11 | \$167.7M | 4.0 | | | |